

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 95-59
Preemption of Local Zoning Regulation	)	DA 91-577
of Satellite Earth Stations	)	45-DSS-MISC-93

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**REPLY COMMENTS OF THE  
CONSUMER ELECTRONICS GROUP OF THE  
ELECTRONIC INDUSTRIES ASSOCIATION**

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby replies to the comments that were filed in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding on July 14, 1995.<sup>1</sup> As the record of this proceeding makes clear, the Commission should amend Section 25.104 of its rules as set forth in the Notice, with the modifications discussed below.

**I. INTRODUCTION**

EIA/CEG is the principal trade association of the consumer electronics industry. EIA/CEG members design, manufacture, import, distribute, and sell a wide array of consumer electronics equipment, including television receivers and other video equipment. Virtually all Americans who view video programming do so on products produced by EIA/CEG member companies. One of the most successful consumer electronics products to be introduced by

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<sup>1</sup> See Preemption of Local Zoning Regulation of Satellite Earth Stations, FCC 95-180, IB Docket No. 95-59, DA 91-577, 45-DSS-MISC-93 (released May 15, 1995) [hereinafter "Notice"].

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EIA/CEG's members in the recent past is the 18 inch parabolic antenna which is used to receive Direct Broadcast Satellite ("DBS") video programming.<sup>2</sup> EIA/CEG members thus have a direct interest in the outcome of this proceeding, which is both timely and critical to the success of DBS.

As the parties filing in support of the Commission's Notice have made clear, there is a very real need for the Commission to expand the scope of its preemption rules. Whether intended or otherwise, local zoning regulations and other requirements are having an adverse impact on the acquisition and use of satellite antennas by residential consumers. The parties taking issue with the Commission's proposals do not seriously dispute the negative impact which local ordinances are having on the installation and use of satellite antennas. Rather, their comments focus almost exclusively on the inherently local nature of zoning. Although their statements about zoning are largely true, they are simply not relevant to the issue at hand, given the preeminent federal interest in ensuring universal access to satellite communications. Notwithstanding the claims of local governments to the contrary, the Commission's proposed rules do reflect a reasonable accommodation of this paramount federal interest and the legitimate concerns of state and local governments with the health, safety and welfare of their citizenry.

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<sup>2</sup> See Comments of Satellite Broadcasting and Communications Ass'n of America, IB Docket No. 95-59, at 7-8 (July 14, 1995) [hereinafter "SBCA Comments"].

## **II. THE RECORD OF THIS PROCEEDING DEMONSTRATES THE NEED FOR THE EXPANDED PREEMPTION PROPOSED BY THE COMMISSION'S NOTICE.**

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In their comments, a variety of parties -- ranging from individuals to trade associations -- have described situations in which local governments have created unnecessary obstacles to the installation and use of satellite antennas.<sup>3</sup> This rulemaking proceeding, however, is not the first occasion on which the Commission has been presented with such information. As the Commission explained in its Notice, the parties requesting an expansion of the Commission's preemption policies have previously offered "substantial, detailed evidence that many local zoning restrictions are creating unreasonable barriers to the growth of satellite-based services."<sup>4</sup>

The parties opposing any further preemption of local zoning regulations attempt to dismiss the evidence cited by the Notice as anecdotal.<sup>5</sup> They also argue that the Commission should not overreact to a "'stray' case of overreaching by a particular municipality."<sup>6</sup> In short,

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<sup>3</sup> See, e.g., SBCA Comments at 11-17; Comments of Hughes Network Systems, Inc., IB Docket No. 95-59, at 6-10 (July 14, 1995) [hereinafter "Hughes Network Comments"]; Comments of United States Satellite Broadcasting Co., Inc., IB Docket No. 95-59, at 6-8 (July 14, 1995) [hereinafter "USSB Comments"]; Comments of Robert J. Abbott, IB Docket No. 95-59, at 2-4 (July 14, 1995).

<sup>4</sup> Notice at ¶ 11.

<sup>5</sup> See, e.g., Comments of City of Dallas, et al., IB Docket No. 95-59, at 7-8 (July 14, 1995).

<sup>6</sup> Letter from Frank J. Lauhoff, City of Farmington, Michigan, to Office of the Secretary, IB Docket No. 95-59 (July 12, 1995).

they argue that any problems created by individual zoning ordinances can be satisfactorily resolved under the Commission's existing rules on a case-by-case basis.<sup>7</sup>

Although undoubtedly well meaning, these parties fail to recognize the enormously adverse impact which superficially benign zoning, permitting and hearing requirements can have on consumers interested in acquiring satellite antennas and subscribing to DBS video programming. As DIRECTV and others have correctly pointed out, "DBS can compete with cable television only if antenna installation is quick, inexpensive, and hassle-free."<sup>8</sup> As these parties have shown, the imposition of more than a de minimis burden on the installation and use of DBS antennas will chill the market for DBS almost as effectively as an outright prohibition on satellite antennas. Consumers choosing between cable television and DBS will invariably pick cable if the choice of DBS requires them to travel to City Hall and obtain a building or special use permit,<sup>9</sup> to prepare lot or building specifications,<sup>10</sup> to attend a hearing,<sup>11</sup> to

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<sup>7</sup> These arguments overlook the need to revise -- at a minimum -- the procedural aspects of the Commission's rules as a result of the Second Circuit's decision in Town of Deerfield v. FCC, 992 F.2d 420 (2d Cir. 1992). See Notice at ¶¶ 48-50.

<sup>8</sup> Comments of DIRECTV, IB Docket No. 95-59, at 3 (July 14, 1995) [hereinafter "DIRECTV Comments"]; see, e.g., USSB Comments at 4-5; Comments of PRIMESTAR Partners L.P., IB Docket No. 95-59, at 4-5 (July 14, 1995) [hereinafter "PRIMESTAR Comments"].

<sup>9</sup> See USSB Comments at 6-7; DIRECTV Comments at 4.

<sup>10</sup> See USSB Comments at 7.

<sup>11</sup> See id.; PRIMESTAR Comments at 4

screen, fence and color coordinate their DBS antennas,<sup>12</sup> or to otherwise become involved in a "bureaucratic quagmire."<sup>13</sup>

There is thus a very real and very pressing need for the Commission to strengthen its preemption rules and policies, particularly as they relate to small DBS satellite antennas. The changes proposed by the Notice, however, do not go far enough. Given the impact which local zoning and other regulations can have on the demand for satellite antennas, the Commission should adopt the suggestion -- advanced by numerous parties -- that its proposed rules be revised so as to preempt local ordinances that impose costs on the installation and use of satellite antennas that are more than de minimis in nature.<sup>14</sup> Such a change in the Commission's rules is absolutely essential if satellite-based services such as DBS are to develop, much less become effective competitors to cable television.

The Commission should recognize that more than video programming is at stake. Although DBS is still a one-way broadcast technology, interactive DBS is not that far away. If DBS and similar satellite services are to achieve their full potential as components of the

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<sup>12</sup> See USSB Comments at Exhibit B.

<sup>13</sup> PRIMESTAR Comments at 4. The same can be said for other video programming services that compete with cable television, such as Multichannel Multipoint Distribution Service and Local Multipoint Distribution Service. The Commission should therefore extend the rules that it adopts in this proceeding to non-satellite antennas, once it concludes that it has given the requisite notice. See, e.g., Comments of Bell Atlantic, IB Docket No. 95-59, at 1-2 (July 14, 1995); Comments of Wireless Cable Ass'n International, Inc., IB Docket No. 95-59, at 3-5 (July 14, 1995); Comments of Sony Electronics, Inc., IB Docket No. 95-59, at 4-5 (July 14, 1995) (broadcast television antennas).

<sup>14</sup> See, e.g., SBCA Comments at 26; USSB Comments at 11-12; PRIMESTAR Comments at 6; Hughes Network Comments at 17-18; DIRECTV Comments at 4-5; Comments of Home Box Office, IB Docket No. 95-59, at 3 (July 14, 1995).

National Information Infrastructure, local zoning ordinances cannot be allowed to stand in their way.<sup>15</sup>

In this regard, the Commission should also revise its proposed rules governing transmit-receive satellite antennas so as to preempt "state and local health and safety regulations relating to radio frequency radiation."<sup>16</sup> As the parties proposing this change have correctly noted, concerns about RF radiation are not uniquely or even primarily local or regional in nature. The laws of science and the propagation characteristics of RF radiation do not change from state to state. Excessive RF radiation is as harmful in New York as it is in California.

The regulation of harmful RF radiation is therefore a uniquely federal responsibility. It is also one which the Commission has expressly undertaken in Section 1.1307(b) of its rules. There, the Commission has prohibited the installation and use of satellite earth stations that emit RF radiation at levels beyond those recommended by the American National Standards Institute (in the absence of a full environmental assessment of the impact of exceeding those limits).<sup>17</sup> If the Commission fails to exercise its preemptive authority in this area, state and local ordinances -- based on technically unsupported fears -- could prevent the

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<sup>15</sup> EIA/CEG also endorses the request of several commenting parties that the Commission make clear that its proposed rules apply equally to receive-only and transmit-receive satellite antennas. See, e.g., Comments of National Rural Telecommunications Cooperative, IB Docket No. 95-59, at 6 n.12 (July 12, 1995); Comments of GE American Communications, Inc., IB Docket No. 95-59, at 6 (July 14, 1995); Hughes Network Comments at 31; Comments of ESPN, Inc., IB Docket No. 95-59, at 1-2 (July 14, 1995).

<sup>16</sup> Notice at ¶ 46 (proposed Section 25.104(d)); see SBCA Comments at 33-34; Hughes Network Comments at 31-34; Letter from George W. Bowne, InterLink Satellite Services Corp., to Reed E. Hundt, IB Docket No. 95-59 (July 12, 1995); see also Comments of National Ass'n of Broadcasters, IB Docket No. 95-59, at 4 (July 14, 1995).

<sup>17</sup> See 47 C.F.R. § 1.1307(b) (1994).

deployment of interactive DBS and similar services by placing unjustified restrictions on transmit-receive satellite antennas.<sup>18</sup> Plainly, such a result would be inconsistent with the Commission's statutory goals, both with respect to communications generally and satellite communications in particular. The Commission should therefore preempt state and local regulation of satellite antennas relating to RF radiation.

### **III. CONCLUSION**

As set forth above, the Commission should adopt the proposed revisions of Section 25.104 of its rules with the modifications suggested herein. Only by doing so will the


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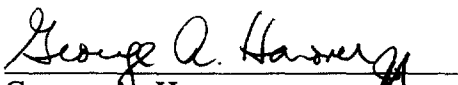
<sup>18</sup> As the record demonstrates, EIA/CEG's concerns in this regard are by no means far-fetched. See Hughes Network Comments at 33.

Commission succeed in promoting an innovative and competitive market for satellite-based communications services.

Respectfully submitted,

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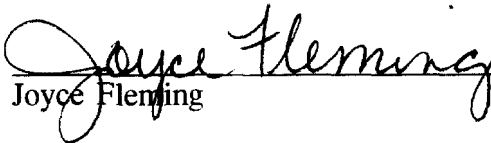
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August 15, 1995



**CERTIFICATE OF SERVICE**

I, Joyce Fleming, hereby certify that copies of the foregoing Reply Comments of Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG"), were served by hand or by First-Class United States mail, postage prepaid, upon the parties appearing on the attached service list this 16th day of August, 1995.

  
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